

STATE OF MICHIGAN
MACOMB COUNTY CIRCUIT COURT

CHRISTOPHER HUTCHINS,

Plaintiff,

vs.

Case No. 2005-0244-NZ

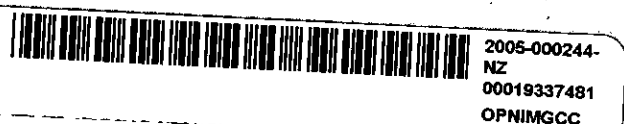
MACOMB COUNTY JAIL,
CORRECTIONAL MEDICAL
SERVICES, MACOMB COUNTY
SHERIFF'S DEPARTMENT,

Defendants.
_____ /

OPINION AND ORDER

Defendant Correctional Medical Services ("CMS") has brought a motion for summary disposition.

Plaintiff filed this complaint on January 20, 2005. Plaintiff alleges that he underwent surgery to remove a blood clot in his right leg on March 30, 2003. Plaintiff claims that he was prescribed an anti-coagulant called Coumadin in order to prevent the formation of subsequent clots. Plaintiff alleges that he was transferred from Newaygo County Jail to Macomb County Jail to face charges for a probation violation on April 24, 2003. Plaintiff claims that a nurse from Newaygo County Jail instructed Macomb County deputies that he required daily doses of Coumadin and Tylenol for the post-operative care of his arteries. Plaintiff alleges that Macomb County deputies and nurses informed him that the doctor was on vacation. As such, plaintiff claims that he did not receive his prescribed medications for the first six days he was held in the Macomb County Jail. Plaintiff claims that he sought emergency medical treatment on May 9,



2003—three days after his release. Plaintiff asserts that another bypass was subsequently performed on his leg. Plaintiff alleges that his condition continued to worsen, and his leg was ultimately amputated on January 21, 2004.

Plaintiff seeks damages for the loss of his leg, pain and suffering, humiliation and embarrassment. Plaintiff has therefore brought Count I, for Fourth and Fourteenth Amendment violations, Count II, for Eighth Amendment violations, and Count III, for gross negligence.

CMS has brought a motion for summary disposition pursuant to MCR 2.116(C)(10). Based on CMS's allegations, the Court believes that CMS is also seeking summary disposition of a portion of plaintiff's complaint pursuant to MCR 2.116(C)(8). Failure to cite an appropriate court rule in conjunction with a motion for summary disposition does not prevent the Court from reviewing a motion under the correct court rule. See, e.g., *De Caminada v Coopers & Lybrand*, 232 Mich App 492, 495, n 1; 591 NW2d 364 (1998). Therefore, the Court shall review CMS's motion under both MCR 2.116(C)(8) and (C)(10).

Summary disposition may be granted pursuant to MCR 2.116(C)(8) on the ground that the opposing party "has failed to state a claim on which relief can be granted." *Radtke v Everett*, 442 Mich 368, 373; 501 NW2d 155 (1993). All factual allegations are accepted as true, as well as any reasonable inferences or conclusions that can be drawn from the facts. *Id.* The motion should be granted only when the claim is so clearly unenforceable as a matter of law that no factual development could possibly justify a right of recovery. *Wade v Dep't of Corrections*, 439 Mich 158, 163; 483 NW2d 26 (1992); *Cork v Applebee's Inc*, 239 Mich App 311, 315-316; 608 NW2d 62 (2000).

A motion for summary disposition brought under MCR 2.116(C)(10) tests the factual support for the plaintiff's claim. *Arias v Talon Development*, 239 Mich App 265, 266; 608 NW2d 484 (2000). A motion under MCR 2.116(C)(10) must be supported by affidavits, depositions, admissions, or other documentary evidence. MCR 2.116(G)(3)(b). The adverse party may not rest upon mere allegations or denials of a pleading, but must, by affidavits or other appropriate means, set forth specific facts to show that there is a genuine issue for trial. MCR 2.116(G)(4). The court must consider all this supporting and opposing material. MCR 2.116(G)(5). *Cole v Ladbroke Racing Michigan, Inc*, 241 Mich App 1, 7; 614 NW2d 169 (2000). If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *Smith v Globe Life Ins Co*, 460 Mich 446, 455; 597 NW2d 28 (1999).

In support of its motion for summary disposition, CMS argues that plaintiff has not claimed that his alleged denial of medical care was a result of a policy of CMS. CMS also argues that plaintiff has failed to demonstrate the CMS was deliberately indifferent to plaintiff's serious medical needs. Next, CMS urges that independent contractors cannot be held liable for gross negligence, nor could it otherwise be held liable for gross negligence since plaintiff cannot prove that CMS was grossly indifferent to his serious medical needs. Further, CMS alleges that plaintiff has failed to state claims upon which relief can be granted under the Fourth and Eighth Amendments of the U.S. Constitution. Finally, CMS claims that plaintiff has failed to establish that CMS's alleged wrongdoing was a proximate cause of plaintiff's injury.

Plaintiff has not filed a response to CMS's motion for summary disposition.

First, the Court is satisfied that plaintiff has failed to state a claim under 42 USC 1983 for violation of his Fourth Amendment rights. The Fourth Amendment, as applied to the states by the Fourteenth Amendment, prohibits unreasonable searches and seizures. See, e.g., *People v Manning*, 243 Mich App 615, 624 NW2d 746 (2000). Plaintiff has clearly failed to state a claim under the Fourth Amendment as to CMS, since plaintiff has not alleged that CMS engaged in an illicit search or seizure of plaintiff. As such, the protections of the Fourth Amendment are inapplicable to the facts alleged by plaintiff. Therefore, summary disposition of plaintiff's Section 1983 action as it pertains to his Fourth Amendment rights is appropriate pursuant to MCR 2.116(C)(8).

Plaintiff's count under the Eighth Amendment is also unavailing. Courts apply "the Due Process Clause rather than the Eighth Amendment in considering the claims of pretrial detainees. Due process requires that a pretrial detainee not be punished. A sentenced inmate, on the other hand, may be punished, although that punishment may not be 'cruel and unusual' under the Eighth Amendment." *Bell v Wolfish*, 441 US 520, 535, n 16; 99 S Ct 1861; 60 L Ed 2d 447 (1979) (citation omitted). Since plaintiff was detained pending trial for an alleged probation violation, the Eighth Amendment is inapplicable to the case at bar, and summary disposition of this count is appropriate pursuant to MCR 2.116(C)(8).¹

Next, the Court shall address CMS's contention that there is no genuine issue of material fact precluding summary disposition of plaintiff's Section 1983 claim that his Fourteenth Amendment rights were violated. 42 USC 1983 provides a remedy against

¹ The Court notes that, even if the Eighth Amendment were applicable, this count would still be dismissed pursuant to MCR 2.116(C)(10) for the reasons outlined in the discussion of plaintiff's Fourteenth Amendment claim, *infra*.

any person who, under color of state law, deprives another of rights protected by the constitution or laws of the United States. *Payton v Detroit*, 211 Mich App 375, 398; 536 NW2d 233 (1996). The U.S. Supreme Court has observed that “the touchstone of the § 1983 action . . . is an allegation that official policy is responsible for a deprivation of rights protected by the Constitution.” *Monell v Dep’t of Social Services of City of New York*, 436 US 658, 690; 98 S Ct 2018; 56 L Ed 2d 611(1978). A Section 1983 action is also appropriate when “constitutional deprivations [are] visited pursuant to . . . ‘custom’ even though such a custom has not received formal approval through the body’s official decisionmaking channels.” *Id.* at 690-691.

In the context of medical injuries sustained while incarcerated, it well established that the government has an obligation to provide medical care for prisoners. *Estelle v Gamble*, 429 US 97, 103; 97 S Ct 285; 50 L Ed 2d 251 (1976). Deliberate indifference to serious medical needs of prisoners is proscribed by the Eighth Amendment. *Id.* at 104 (citation omitted). Further, “such deliberately indifferent conduct must also be enough to satisfy the fault requirement for [Fourteenth Amendment] due process claims based on the medical needs of someone jailed while awaiting trial.” *County of Sacramento v Lewis*, 523 US 833, 850; 118 S Ct 1708; 140 L Ed 2d 1043 (1998) (citations omitted). However, “an inadvertent failure to provide adequate medical care” is not actionable, nor is a “complaint that a physician has been negligent in diagnosing or treating a medical condition.” *Estelle, supra* at 105-106. As such, “a prisoner must allege acts or omissions sufficiently harmful to evidence deliberate indifference to serious medical needs.” *Id.* at 106. As with other Section 1983 actions, a plaintiff can recover compensatory damages only upon proving that he suffered an actual injury as a result of the deprivation of his

constitutional rights. *Memphis Community School Dist v Stachura*, 477 US 299, 307-310; 106 S Ct 2537; 91 L Ed 2d 249 (1986).

The Court has carefully reviewed the pleadings, depositions and other documentary evidence presented in this case. From the documentary evidence presented, it appears that plaintiff has a history of recurring blood clots. See, e.g., Exhibit H, Spectrum Hospital Records. Upon his transfer to Macomb County Jail on April 24, 2003, plaintiff indicated that he did not have any problems requiring *immediate* medical attention, and he was placed on the "sick call list." Exhibit F, CMS Medical Records at 25. CMS states that its policy is to schedule individuals on this list to see a doctor the following day, but claims that plaintiff failed to show up for his appointment. Nevertheless, plaintiff's medical records show that he did receive his medication on April 27, 2003, and met with a doctor on April 28, 2003. *Id.* at 3, 6. He apparently received his medication each subsequent day for the duration of his incarceration. *Id.* There is no indication in any of plaintiff's medical records that plaintiff ever complained about being in any pain, thereby alerting medical personal that he was at risk of re-occlusion. *Id.* at 5-6. During his twenty-six day incarceration, plaintiff was given blood tests on ten separate occasions in order to monitor his risk of clotting. *Id.* at 7-19. Further, plaintiff's medical records include thirteen physician's orders pertaining to his treatment during his incarceration. *Id.* at 1-4.

Given plaintiff's failure to respond to CMS's motion, much less provide any documentary evidence in opposition to the motion, the Court is satisfied that there is no genuine issue of material fact precluding summary disposition in favor of CMS. The documentary evidence and deposition testimony presented indicate that CMS was not

guilty of deliberate indifference to plaintiff's serious medical needs. There is no indication, apart from plaintiff's unsupported and unsworn allegations, that CMS had a policy or custom of intentionally denying treatment to individuals in plaintiff's position, thereby depriving such individuals of their constitutional rights. In short, while the documentary evidence suggests that plaintiff was deprived of his medication for three days, nothing presented to this Court suggests that this deprivation was the result of a policy or custom of CMS. Likewise, since an inadvertent failure to provide adequate medical care does not constitute deliberate indifference to an inmate's serious medical needs, plaintiff's count for violations of his Fourteenth Amendment rights must be dismissed pursuant to MCR 2.116(C)(10).

Even if this Court were to accept, *arguendo*, that CMS's actions deprived plaintiff of his constitutional rights, there is no basis for finding that CMS's actions caused plaintiff's subsequent injuries. While the documentary evidence before the Court shows that plaintiff experienced additional blood clots after his incarceration, it also indicates that the clots were "successfully" treated through a procedure known as lytic therapy, in June, 2003.² Exhibit H, *supra* at 892. Despite this treatment, plaintiff's arteries began to re-occlude in late August, 2004. *Id.* at 581. The recurring clots ultimately lead to the amputation of his right leg on January 21, 2004. *Id.* at 228.

However, plaintiff's surgeon, Dr. Robert Cali, acknowledges that it is typical for an individual with plaintiff's medical history to "repeatedly thrombose his artery or graft," and it did not surprise him that plaintiff's leg ultimately required amputation. Exhibit B, Deposition of Dr. Robert Cali at 37. Further, Dr. Cali acknowledges that he

² According to defendants, the treatment "involves the use of chemicals to dissolve the clot."

"can't say whether or not the lack of Coumadin would have contributed to the loss of [plaintiff's] leg." *Id.* at 40. Deposition testimony of other medical professionals involved in plaintiff's treatment indicates that there is no realistic possibility that a lack of Coumadin for three days would lead to a blood clot approximately four months later. See Exhibit C, Deposition of P.A. Robert Poehl at 25-26; Exhibit G, Deposition of Dr. Louis Marks at 51. Plaintiff's hematologist, Dr. Louis Marks, specifically testified that, where an individual has received lytic therapy, and his physicians "apparently felt that the blood flow was reestablished, then you're like literally starting over again." Marks Deposition at 57. In fact, Dr. Marks opines that "anything that happened before" the lytic therapy "really [wouldn't] make that much of a difference." *Id.*

Based on this deposition testimony, there is no genuine issue of material fact that the failure to supply plaintiff with his medication for three days in April was not the proximate cause of his amputation the following January, especially given his intervening "successful" treatment. Since plaintiff has not supported his contention that CMS's actions caused his injuries, the Court is satisfied that plaintiff's injury was not the result of an alleged deprivation of his Fourteenth Amendment rights, and plaintiff is precluded from recovering under Section 1983.

Next, the Court shall address CMS's assertion that independent contractors cannot be held liable for gross negligence or, alternatively, that CMS was not grossly indifferent to plaintiff's medical needs. "Gross negligence" is defined as "conduct so reckless as to demonstrate a substantial lack of concern for whether an injury results." MCL 691.1407(7)(a). Although MCL 691.1407 applies to governmental immunity from tort liability, CMS has cited no binding precedent suggesting that independent contractors

cannot be held liable for gross negligence. However, for the same reasons that CMS cannot be held liable under Section 1983 for "deliberate indifference" to plaintiff's serious medical needs, the Court is satisfied that there is no genuine issue of material fact as to whether CMS's conduct demonstrated a "substantial lack of concern" as to these needs. Moreover, although CMS does not specifically address this issue, the Court notes that the plaintiff's claim for gross negligence as to CMS would also fail insofar as plaintiff has not supported his contention that CMS's actions caused his injuries. As such, summary disposition of plaintiff's count for gross negligence in favor of defendant CMS is warranted.

For the reasons set forth above, defendant CMS's motion for summary disposition is GRANTED. Pursuant to MCR 2.602(A)(3), this Opinion and Order does not resolve the last pending claim or close this case.

IT IS SO ORDERED.

Dated: May 22, 2006

DONALD G. MILLER
Circuit Court Judge

CC: David D. Black
John Martin
Ronald W. Chapman

DONALD G. MILLER
CIRCUIT JUDGE

MAY 22 2006

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CARMELLA SABAUGH, COUNTY CLERK

BY:  Court Clerk